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Supreme Court, U.S.
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No. 95 - 1064

In The

SUPREME COURT of the UNITED STATES

October Term 1995

JOSEPH SERFECZ and FIRST CHICAGO TRUST COMPANY OF ILLINOIS, TRUSTEE OF TRUST NO.684,

Petitioners,

vs.

JEWEL FOOD STORES, INC. and AMERICAN STORES PROPERTIES, INC.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITIONER'S REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

Lynda J. Khan
Counsel of Record
36 S. Wabash Ave.
Suite 714
Chicago, IL 60603
(312) 553-4646

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ARGUMENT

The most important issue in this case concerns enforcement of the antitrust laws, and whether the opinions of this Court must be interpreted in a way to enable major corporations to escape liability for antitrust violations. This Court has stated that the antitrust laws are really designed to protect competition and not competitors, and that injury to a competitor is not of concern to the antitrust laws absent an injury to competition. If this is still true, there is no justification for denying standing to Serfecz on the grounds that he is not a competitor. A "bright line" rule such as the one devised by the Seventh Circuit in this case ignores the realities of the marketplace and leaves a gap in private antitrust law enforcement big enough for a giant like Jewel to squeeze through./1

Denying Serfecz standing to bring this antitrust case may not completely deny him a remedy, but it will most cert-

ainly deny a remedy to consumers who are forced to shop at the Jewel in Elk Grove Village. A consumer, assuming he was even able to find out what Jewel is doing, would have to have saved his grocery receipts for the last nine years in order to collect for Jewel's overcharges. It is unlikely that such a class of "potential plaintiffs" even exists. In addition, denying standing to Serfecz will actually promote Jewel's campaign to eliminate competition, not only in Elk Grove Village but in the entire state of Illinois (and possibly other states as well). Jewel's location restrictions throughout Illinois must be considered by this Court when ruling on the issue of Serfecz's standing in this case, because the fact that Jewel obtains and enforces these restrictions underlines and emphasizes Serfecz's most compelling argument - that he and others like him are the vehicles by which Jewel is stifling competition. It cannot be overemphasized that merely by restricting a location, or in this case, hanging onto its lease, Jewel can eliminate competition

from major competitors like Dominicks, and can also keep out the many small, independent grocers who might want one particular location. The injury to competitors is too indirect, and not sufficiently grave to motivate them to file an antitrust lawsuit; this is especially true of small independents. Yet competition is severely impaired, and in Elk Grove Village, entirely eliminated. It becomes clear that Serfecz is not only an "appropriate" private attorney general, but in fact the only one.

To label Serfecz as a "supplier" of Jewel, in order to force this case into the mold of Illinois Brick is to ignore the factual and economic basis of this case. Serfecz does not sell supplies to Jewel and is not suing for decreased revenues due to a decrease in orders from Jewel because of injury to Jewel's business. Serfecz owns a shopping center, and a perfect location for a grocery store to provide competition for Jewel. Serfecz is not claiming that his tenant is being injured, but rather that Jewel

is using its lease at the Grove Mall to keep any other grocery tenant out, and thus is deliberatly causing the destruction of the Mall. Jewel somewhat gleefullly points to Serfecz and his blighted shopping center and states that Serfecz has not suffered antitrust injury, and at the same time Jewel enjoys a monopoly (and higher profits) which could only have been achieved by destroying the Grove Mall. Jewel is very confident that it has devised a scheme to stifle competition in a way to escape accountability under the antitrust laws.

The question in this case, and the question that the Circuits disagree upon, is whether or not the label placed upon a plaintiff should automatically determine whether he has standing to enforce the antitrust laws. Some circuits, like the Seventh Circuit in this case, have answered the question positively. They have held that if the plaintiff is called a "supplier" or an "employee", he can never have standing to bring an antitrust case. Other courts, as in the Ostrofe

case, look past the label and try to figure out what the defendant is really up to. If the defendant is actually using his relationship with and power over the plaintiff to stifle competition, or to violate the antitrust laws, then the plaintiff should have standing to sue for the injuries defendant directly inflicts upon him in the process.

Respondent also argues that the McCready plaintiff was a "classic" antitrust plaintiff because she was a consumer. Again, this argument ignores the entire line of reasoning in that case. McCready was not injured as a direct result of the antitrust violation. She was not claiming that she paid higher prices because of the restraint in the psychotherapy market. McCready, like Serfecz, complained that Blue Shield was using its position as insurer to force her to see a psychiatrist, all in order to keep out psychologists.

It is clear that the Seventh Circuit in this case followed the "target area" approach, which appraoch to standing was specifically rejected by this Court in

Associated General.

Petitioner respectfully requests this Court to grant certiorari in this case to resolve the conflict.

Respectfully submitted,

Lynda J. Khan
Lynda J. Khan
36 S. Wabash Avenue
Suite 714
Chicago, IL 60603
(312) 553-4646

FOOTNOTE

1/ Jewel argues that landlords have "typically" been denied standing to bring an antitrust lawsuit for a violation occurring in a tenant's market. (Respondents' Brief in Opposition, p. 11, f.n.5). However Jewel ignores two cases, one a Seventh Circuit case, in which the courts reached the opposite conclusion.See: Hoopes v. Union Oil, Co., 374 F. 2d 480 (9th Cir. 1967); Congress Building Corp. v. Loews's, Incorporated, 246 F. 2d 587 (7th Cir. 1957). Both these courts found that the landlords had standing to sue for an antitrust violation perpetrated by their tenants, where the landlords were directly injured, and were suing for injuries in their own right, and and injuries derived through another's. This result is directly opposite from the holding in the cases cited by Jewel.